

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER REDFORD
COMMISSIONER SMITH
COMMISSION SECRETARY
COMMISSION STAFF

FROM: DON HOWELL
DEPUTY ATTORNEY GENERAL

DATE: AUGUST 9, 2013

SUBJECT: COMMUNITY ACTION PARTNERSHIP ASSOCIATION OF IDAHO'S
MOTION TO COMPEL, CASE NO. PAC-E-13-04

On July 30, 2013, the Community Action Partnership Association of Idaho (CAPAI) filed a Motion to Compel requesting the Commission order PacifiCorp dba Rocky Mountain Power “to fully respond to CAPAI’s discovery previously propounded in this case.” Motion at 1. As set out in its supporting Affidavit from counsel and its brief in support of its Motion to Compel, CAPAI issued its initial discovery to Rocky Mountain on April 29, 2013. Aff. Exh. B. In particular, discovery request No. 6(b) states:

6. Using [Rocky Mountain’s] low-income proxy group, and based on actual monthly test run data as referred to in Request No. 4, please make the following rate design model runs:

a. . . .

b. Assuming no change to the Company’s existing monthly basic charge, calculate the effects on the low-income proxy groups’ monthly bills in comparison to non-low income residential customers (using test year actual monthly consumption) if the existing two-tiered rate design is changed such that the consumption amount of the first tier is increased from the existing 700 kWh summer block to 800 kWh/month, 1000 kWh and 1200 kWh. Please provide the same data for the winter block of 1000 kWh if the block were changed to 800 kWh, 1200 kWh and 1400 kWh.

Id. On May 2, 2013, the Company’s representative indicated that answers to “Question 6 will take some time.” Exh. C.

On May 29, 2013, Rocky Mountain forwarded its response to CAPAI's discovery request 6(b). The Company's response to request 6(b) stated:

The Company has not performed the two-tiered rate design analysis requested by CAPAI. As specified in paragraph 18 of the [proposed] Stipulation if CAPAI is a party to the Stipulation the Company agrees to participate in a collaborative rate design process to evaluate alternatives.

CAPAI Exh. E.

In its brief, CAPAI observes that Commission Rule 221.03 provides that a party to whom discovery has been propounded has 14 days to object or explain why a question cannot be answered, and 21 days to answer. Brief at 13. CAPAI asserts that Rocky Mountain "has not yet responded [to discovery request 6(b) that] was propounded on April 29, 2013." *Id.* CAPAI states that it has been making "a concerted effort to obtain and analyze low-income consumption data from Idaho utilities since 2012." *Id.* at 14. CAPAI maintains that "Historically, and for various reasons including privacy concerns, utilities have not identified, gathered, or provided to CAPAI or others certain information related to their low-income customers." *Id.* CAPAI states that its goal in obtaining this information is to obtain "empirical evidence, of how differing rate residential rate design alternatives affect the poor." *Id.*

Turning to its Motion to Compel, CAPAI asserts that PacifiCorp's Washington utility (Pacific Power & Light) has provided Washington's community action agency "the very information sought by CAPAI in this case." *Id.* at 16. CAPAI maintains that the very same PacifiCorp employee provided this information in the Washington case "has already performed the very same model run in Washington that CAPAI seeks in Idaho." *Id.* at 17.

CAPAI'S "REPLY" AND REQUEST FOR ORAL ARGUMENT

Even though Rocky Mountain's answer to CAPAI's Motion to Compel is not due under the Commission's rules until August 13, 2013,¹ CAPAI filed a "reply" to Rocky Mountain's informal communications between the parties on August 6, 2013. CAPAI requests that the Commission schedule an oral argument for the Motion to Compel prior to August 9, 2013, and require Rocky Mountain to adequately answer discovery request 6(b) no later than August 13, 2013. In the event the Commission is unable to adopt the preceding schedule, CAPAI requests that the Commission extend the current schedule in this case by three weeks. CAPAI Reply at 11-12. In

¹ Rule 57.03 ("In no event is a party entitled to more than fourteen (14) days to answer a motion. . . ."). Rocky Mountain did file its answer to the Motion to Compel on August 8, 2013.

addition, CAPAI requests the Commission issue an award of sanctions as well as costs, fees and expenses pursuant to I.R.C.P. 37(a)(4) and Chapter 7 of the Public Utilities Law. *Id.* at 12.

ROCKY MOUNTAIN'S ANSWER

On August 8, 2013, Rocky Mountain filed its answer to CAPAI's Motion to Compel. Rocky Mountain raises a number of points in its answer. More specifically, the Company indicates that it is under "no duty or obligation to perform the study requested by CAPAI." Response at ¶ 2. The utility asserts that it is not in the possession or custody of such a study and reiterates that it has not completed the requested analysis. *Id.* at ¶ 5. Nevertheless, "in the interest of not wasting Commission resources hearing oral argument on CAPAI's Motion, and not incurring further costs and expending additional Company time, Rocky Mountain Power will provide the results of the requested study to CAPAI on or before August 12, 2013." *Id.* at ¶8.

STAFF ANALYSIS

Based upon Rocky Mountain's answer that it will provide the study requested in request No. 6(b), Staff believes the Commission need not to take any immediate action on the Motion. Staff has been informed by CAPAI that it is more interested in receiving the requested information than pursuing its Motion to Compel and sanctions. However, Staff believes that CAPAI is reluctant to withdraw its Motion until such time as it has had an opportunity to fully review Rocky Mountain's discovery response.

Given the existing schedule, the Commission might consider providing CAPAI with additional time in which to review the discovery studies and prepare its direct testimony in this case. If the Commission finds that CAPAI should be afforded additional time to file its written testimony, the deadline for its testimony could be moved to August 23, instead of August 16. Reply testimony would still be due on August 30, and the rest of the schedule would remain the same.

COMMISSION DECISION

What would the Commission like to do?



Don Howell
Deputy Attorney General